UNITED STATES OF AMERICA Before the COMMODITY FUTURES TRADING COMMISSION

RECEIVED C.F.T.C.

RICHARD MESIROW

٧.

CHICAGO MERCANTILE EXCHANGE

ORDER DENYING SPA

On April 16, 2007, the Chicago Mercantile Exchange ("CME") notified Richard Mesirow ("Mesirow") that it found he had breached his fiduciary duty to his customers by revealing information concerning customer orders to another trader and by altering prices to his customers' disadvantage. The CME fined Mesirow \$75,000, suspended his membership and trading floor access privileges for six months, and ordered him to pay \$5,500 restitution. On May 14, 2007, Mesirow filed an appeal from the CME's decision and asked for a stay of the May 21, 2007 effective date pending appeal.

Mesirow argues that there is a likelihood that he will succeed on the merits of his appeal because the CME did not prove the alleged violations by a preponderance of the evidence. He claims that the CME's case is based upon circumstantial evidence that amounts to "mere speculation." Pet. at 6. Mesirow also argues that he will succeed on the merits because the proceeding was fundamentally unfair. He contends that the CME refused to make available videotape evidence of trades on other dates so that "he could demonstrate that locals routinely anticipated market on close orders he was filling and to establish the degree of difficulty of filling closing orders." Pet. at 14. Mesirow contends that denial of the stay would result in a sixmonth suspension, which "in and of itself constitutes irreparable harm." Pet. at 16. He argues

The six-month suspension imposed requires Mesirow to take a hiatus from trading; it does not amount to a termination of his business in the futures industry. Auciello v. Commodity Exchange, Inc., [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,799 at 44,270 (CFTC Sept. 27, 1996). Mesirow has not particularized either the amount of his potential loss or how his trading business will be destroyed by a six-month hiatus. GNP Commodities, ¶ 25,399 at 39,363 ("[Petitioner has not] demonstrated that the imposition of a 24-month trading ban will cause him irreparable harm. Even if we assume that suspensions from personal trading can produce financial harm in the sense that business once lost cannot be recouped, it is not the kind of monetary loss considered irreparable."). Citing Gilchrist, ¶ 25,024 at 37,805 and Sampson v. Murray, 415 U.S. 61, 90 (1974) (temporary loss of income does not usually constitute irreparable injury).

In rare instances a suspension may have consequences that are comparable to a termination of business. *Auciello*, ¶26,799 at 44,270. There is nothing before us to establish that the six-month suspension at issue here will have such a draconian result. Mesirow has not presented any evidence to show that "his livelihood would be irretrievably lost." *Butler v. NYMEX*, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶25,089 at 38,080 (CFTC July 22, 1991). Consequently, Mesirow has not established that he is likely to suffer irreparable harm in the circumstances presented. Because Mesirow has not made the requisite showing of irreparable harm, we need not consider the other factors for issuing a stay.

¹ Under our precedent, monetary loss generally does not rise to the level of irreparable harm. Global, ¶ 27,467 at 47,241 citing In re Gilchrist, [1990-1992 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,024 (CFTC Mar. 27, 1991).

Accordingly, Mesirow's petition for stay is denied.

IT IS SO ORDERED.

By the Commission (Chairman JEFFERY Commissioners LUKKEN and DUNN).

IT IS SO ORDERED.

Eileen A. Donovan

Acting Secretary of the Commission Commodity Futures Trading Commission

Dated: May 24, 2007